

# **GUIDELINES AND RULES FOR THE MOTOR VEHICLE REPAIR LABOR AND SERVICES SALES AND USE TAX**

November 1, 2007

These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to persons providing motor vehicle repair labor and services ("Providers") regarding the new motor vehicle repair labor and services taxes enacted by House Bill 3202 (Acts of Assembly 2007, Chapter 896).

House Bill 3202 provides that the development and publication of these guidelines and rules is exempt from the provisions of the Administrative Process Act (*Code of Va. § 2.2-4000 et seq.*). TAX has worked with affected Providers to develop these guidelines and rules. As necessary, additional guidelines and rules will be published and posted on TAX's website, [www.tax.virginia.gov](http://www.tax.virginia.gov).

## **Definitions**

Terms used in the motor vehicle repair labor and services sales and use tax ("Repair Tax") have the same meaning as those used in the Retail Sales and Use Tax, unless defined otherwise, as follows:

"Customer" means any person who contracts with a repair services provider to obtain repair services. "Customer" does not include a repair services provider who contracts with another repair services provider to obtain repair services for resale to a customer.

"Mobile office" means an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites. (Source: *Code of Va. § 58.1-602; § 58.1-2401*)

"Motor vehicle" means every vehicle, except for a mobile office, which is self propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excluding devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth. (Source: *Code of Va. § 58.1-602; § 58.1-2401*)

"Participating Authority" means the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority. (Source: Enactment Clause 6, House Bill 3202 (Acts of Assembly 2007, Chapter 896))

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"Person" means any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular. (Source: *Code of Va.* § 58.1-602)

"Provider" means any person who either 1) performs repair services for a fee and has a place of business in a Participating Authority, or 2) regularly performs repair services for a fee within a Participating Authority. A person shall be deemed to be regularly performing repair services for a fee in a Participating Authority if he enters that Participating Authority to perform repair services for a fee twelve or more times during a calendar year.

"Repair" means the examination, maintenance, servicing, adjustment, improvement, replacement, removal or installation of any part of a motor vehicle, including, but not limited to, body work, painting, oil changes and incidental services such as storage and towing, and excluding the sale of motor fuel, the use of loaner or rental vehicles, and car washes.

"Repair services" means any labor and services required to repair a motor vehicle.

"Repair Tax" or "Motor Vehicle Repair Labor and Services Sales and Use Tax" means the sales and use tax a Participating Authority imposes in its member localities on motor vehicle repair labor and service charges. (Source: *Code of Va.* § 58.1-605(K); § 58.1-606(H))

"Sales price" means the total amount for which tangible personal property or services are sold, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles. (Source: *Code of Va.* § 58.1-602)

### **Imposition of Tax**

Effective July 1, 2007, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority were authorized to impose in their member localities a sales and use tax on motor vehicle repair services performed for a fee by a Provider at the rate of five percent of the sales price of the repair services. In general, the Repair Tax will be administered by TAX in the same manner as the local sales and use tax.

### **Separately Stated Charges**

Any Provider required to collect the Repair Tax must separately state on any bill, invoice, ticket, or other billing statement the total taxable motor vehicle repair labor and services sales price and the 5% Repair Tax on such services and remit the tax thereon to TAX. (Source: *Code of Va.* § 58.1-625.1)

In order to allow Providers additional time to program their systems and registers, the requirement that the Repair Tax be separately stated shall not be enforced until the Repair Tax has been in effect for six months.

All separately stated repair services charges and all charges for the repair of a motor vehicle in which the true object of the repair is a service performed by a Provider in a Participating Authority are subject to the Repair Tax. (Source: *Code of Va.* § 58.1-605(K); § 58.1-606(H)). The Repair Tax must be reported on each Provider's Form MVR-18, Motor Vehicle Repair Labor & Services Tax Return.

Unless a specific exemption applies, all separately stated charges for the sale of tangible personal property by a Provider and all charges for which the true object of the transaction is a sale of tangible personal property by a Provider remain subject to the Retail Sales and Use Tax. The Retail Sales and Use Tax must be collected and remitted separately using Form ST-9, Retail Sales and Use Tax Return.

In the event that a Provider fails to separately state charges for the sale of tangible personal property and charges for the provision of a service, in order to determine whether a particular transaction that involves both the rendering of a service and the provision of tangible personal property constitutes a service or a sale of tangible personal property, the "true object" of the transaction must be examined. If the object of the transaction is to secure a service and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute a service. However, if the object of the transaction is to secure the property which it produces, then the entire charge, including the charge for any services provided, constitutes a sale of tangible personal property. In instances where both the services rendered and the property transferred are critical elements of a transaction, the

degree of customization, uniqueness or specific services provided in connection with the product shall be considered in determining its appropriate tax status.

Example 1:

For a set price, Provider agrees to check the fluid levels in Customer's motor vehicle, and, if necessary, top off the fluids. Provider does not separately state the charges for the fluids used. The "true object" of the transaction is a service and the entire charge is subject to the Repair Tax and not Retail Sales and Use Tax.

Example 2:

Customer buys a new battery from Provider, who installs the battery. Provider does not separately state the charge for installing the battery. The "true object" of the transaction is a sale of tangible personal property and the entire charge is subject to the Retail Sales and Use Tax and not the Repair Tax.

**Motor Vehicle Refinishers and Painters**

For purposes of the Retail Sales and Use Tax, motor vehicle refinishers and painters may either be considered to be rendering personal services and, as the users and consumers of the materials used in their businesses, they must pay the Retail Sales and Use Tax on their purchases of such materials or motor vehicle refinishers and painters may separately state charges made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during the repair. In this case, the motor vehicle refinisher or painter may purchase such materials exempt of the Retail Sales and Use Tax using a resale exemption certificate and collect the Retail Sales and Use Tax from his customers on such charges. (Source: *Code of Va.* § 58.1-602)

For purposes of the Repair Tax, if a Provider is a motor vehicle refinisher or painter who pays the Retail Sales and Use Tax on its purchases of the materials used in his business, then any charges for such materials should not be separately stated from the service charge and the entire charge is subject to the Repair Tax. However, if a Provider is a motor vehicle refinisher or painter who collects Retail Sales and Use Tax on charges to his customers for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during the repair, then the charges for the materials should be separately stated from the services charges and only the service charge is subject to the Repair Tax. If the Provider is a motor vehicle refinisher or painter who sells other tangible personal property beyond the normal rendition of motor vehicle refinish or paint services, charges for the sale of tangible personal property must be separately stated and the Provider must collect the Retail Sales and Use Tax on charges for the sale of the tangible personal property.

Example 3:

Provider is a motor vehicle painter. Customer hires Provider to paint the hood of his motor vehicle. Provider separately states the charges for the paint and for its services. Provider is entitled to buy the paint exempt from the Retail Sales and Use Tax using its resale exemption certificate. Provider must collect the Retail Sales and Use Tax on the charge for the paint and the Repair Tax on the service charge.

Example 4:

Provider is a motor vehicle painter. Customer hires Provider to paint the hood of his motor vehicle. Provider does not separately state the charges for the paint. Provider is required to pay Retail Sales and Use Tax on its purchase of the paint. As the “true object” of Customer’s transaction is a service, the entire charge for that transaction is subject to the Repair Tax and not the Retail Sales and Use Tax.

Example 5:

Provider is a motor vehicle painter. Customer hires Provider to paint the hood of his motor vehicle. Provider also sells seatcovers to Customer. Provider must separately state the charge for the seatcovers and collect Retail Sales and Use Tax on the charge for the seatcovers. The painting of the hood would be subject to the Repair Tax as discussed in Examples 3 and 4.

**Exemptions**

All sales of motor vehicle repair services are subject to the Repair Tax until the contrary is established. A Provider is required to collect the Repair Tax on taxable motor vehicle repair services unless the Provider receives a properly executed exemption certificate from the customer stating that the customer is exempt from the Repair Tax. Until such time as TAX develops specific exemption certificates for the Repair Tax, Providers may accept the corresponding certificate of exemption from the state and local Retail Sales and Use Tax on tangible personal property used in the repair for Repair Tax. The exemption certificate, when accepted in good faith, will relieve the Provider who obtains it from any liability for the payment or collection of the tax, except upon notice from TAX that the certificate is no longer acceptable. However, a certificate that is incomplete, invalid, infirm or inconsistent on its face is never acceptable, either before or after notice. In the event that a Provider fails to collect the Repair Tax due on the sale of taxable motor vehicle repair services, the Provider is liable for the payment of the tax.

Most exemptions to the Retail Sales and Use Tax also apply to the Repair Tax. These exemptions include, but are not limited to:

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- Charges for motor vehicle repair services provided to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government. (Source: *Code of Va.* § 58.1-609.1(4))
- Charges for motor vehicle repair services provided to any nonprofit organization that holds a valid certificate of exemption from TAX, or any nonprofit church that holds a valid self-executing certificate of exemption, that is exempt from paying state and local Retail Sales and Use Tax. (Source: *Code of Va.* § 58.1-609.11)

The exemptions for separately charged labor and services found in *Code of Va.* § 58.1-609.5 do not apply to the Repair Tax.

Some certificates of exemption from Retail Sales and Use Tax on certain tangible personal property will not relieve a customer from paying the Repair Tax, as the certificate of exemption would not relieve the customer of paying the Retail Sales and Use Tax on any automotive parts used for the repair. These certificates of exemptions include, but are not limited to:

- Manufacturing certificate of exemption, Form ST-11.
- Semiconductor certificate of exemption, Form ST-11B.
- Medical-related certificate of exemption, Form ST-13.

### **Motor Vehicles**

For the purposes of this tax, “motor vehicle” includes, but is not limited to:

- “Automobile and Watercraft Trailers” - any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft. (Source: *Code of Va.* § 46.2-100)
- “Camping Trailers” - every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle. (Source: *Code of Va.* § 46.2-100)
- “Charter Bus” - any motor vehicle manufactured with a minimum seating capacity of 32 passengers or more, excluding the driver. (Source: *Code of Va.* § 46.2-2000)
- “Commuter Bus” - any motor vehicle which has a seating capacity of more than seventeen passengers, is used primarily to transport workers directly to and from

factories, plants, offices, or other places where they work. (Source: *Code of Va.* § 46.2-1175)

- "Minibus" - any motor vehicle having a seating capacity of not less than seven nor more than 31 passengers, including the driver, and used in the transportation of passengers. (Source: *Code of Va.* § 46.2-2000)
- "Motorcycles" - every motor vehicle designed to travel on not more than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour. (Source: *Code of Va.* § 46.2-100)
- "Motor Homes" or "Recreational Vehicles" - every motor vehicle with a normal seating capacity of not more than ten persons, including the driver, designed primarily for use as living quarters for human beings. (Source: *Code of Va.* § 46.2-1900)
- "Passenger Cars" - every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver. (Source: *Code of Va.* § 46.2-100)
- "Pickup or Panel Trucks" - every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less. (Source: *Code of Va.* § 46.2-100)
- "Semitrailers" - every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle. (Source: *Code of Va.* § 46.2-100)
- "Tow Trucks" - every motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." (Source: *Code of Va.* § 46.2-100)
- "Tractor Trucks" - every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto. (Source: *Code of Va.* § 46.2-100)
- "Trailers" - every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes. (Source: *Code of Va.* § 46.2-100)

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- "Travel Trailers" - every vehicle designed to provide temporary living quarters of such size or weight as not to require special highway movement permits when towed by a motor vehicle and having a gross trailer area less than 320 square feet. (Source: *Code of Va.* § 46.2-1900)
- "Trucks" - every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds. (Source: *Code of Va.* § 46.2-100)
- "Utility Vehicles" - a motor vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. (Source: *Code of Va.* § 46.2-100)

For the purposes of this tax, "motor vehicle" does not include:

- "All-Terrain Vehicles" - any three-wheeled or four-wheeled motor vehicle powered by a gasoline or diesel engine and generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering that is intended for off-road use by an individual rider on various types of unpaved terrain. (Source: *Code of Va.* § 46.2-100)
- "Electric Personal Assistive Mobility Device" - a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. (Source: *Code of Va.* § 46.2-100)
- "Electric Power-Assisted Bicycle" - a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power and (ii) an electric motor with an input of no more than 1,000 watts that reduces the pedal effort required of the rider. (Source: *Code of Va.* § 46.2-100)
- "Farm Tractors" - every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements including self-propelled mowers designed and used for mowing lawns. (Source: *Code of Va.* § 46.2-100)
- "Golf Carts" - every self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course. (Source: *Code of Va.* § 46.2-100)



- “Manufactured Homes” - any structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. (Source: *Code of Va.* § 46.2-100)
- “Mobile Offices” - any industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites. (Source: *Code of Va.* § 58.1-2401)
- “Mopeds” - every vehicle that travels on not more than three wheels in contact with the ground that has (i) a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground and (ii) a gasoline, electric, or hybrid motor that displaces less than 50 cubic centimeters. (Source: *Code of Va.* § 46.2-100)
- “Motorized Skateboards or Scooters” - every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters. (Source: *Code of Va.* § 46.2-100)
- “Snowmobiles”- every self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats. (Source: *Code of Va.* § 46.2-100)

### **Motor Vehicle Repair Services**

The examination, maintenance, servicing, adjustment, improvement, replacement, removal or installation of any part of a motor vehicle are considered repairs for the purposes of this tax. These services, unless otherwise stated, are all subject to the Repair Tax. For the purposes of this tax, there is no distinction between the maintenance of a motor vehicle and the repair of a motor vehicle.

Taxable motor vehicle repair services, include, but are not limited to charges for:

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- Routine maintenance, including but not limited to, oil changes, checking and replacing fluids, and tune-ups;
- Towing of motor vehicles in connection with a taxable repair service, when the motor vehicle is towed to a Provider's place of business located within a member locality of a Participating Authority;
- Storage of motor vehicles in connection with a taxable repair service;
- Body repair services;
- Electrical repair services;
- Upholstery repair services;
- Inspection services, but not including any inspection fees transmitted to the Department of State Police or any inspection fees levied by a Participating Authority;
- Installation or removal of parts;
- Installation or removal of audio and video components;
- Replacement of parts, including but not limited to, tires, wheels, brakes, engines, transmissions, mufflers, headlights, body parts, hoses, belts, spark plugs, and batteries;
- Painting and appliqué services; and
- Window tinting.

The charges for the following motor vehicle repair services are not subject to the Repair Tax:

- Separately stated cleaning and detailing services not in connection with a repair;
- Separately stated delivery or handling charges applicable to tangible personal property sold to the customer;
- Separately stated repair services not performed by a Provider within a Participating Authority;

- Official safety inspections of motor vehicles, however, charges for repairs in connection with an official safety inspection are taxable;
- Repair services performed under maintenance contracts and warranty plans;
- Repair services in preparation for the sale of a motor vehicle by a Provider, either with the repair services performed by the Provider selling the motor vehicle or with the services purchased by the Provider selling the motor vehicle from another Provider, including but not limited to, inspections, tune-ups, cleaning, removing protective shipping coverings, checking fluids, and running test checks on the motor vehicle;
- Installation of equipment that is required by law or regulation as a condition for operation of a motor vehicle by a handicapped person, including but not limited to, controls, lifts, automatic transmission, power steering, and power brakes, in preparation for sale, either with the seller of the motor vehicle as the provider of the repair services or with the services bought for resale from a provider; and
- Motor vehicle repair services sold to a Provider in a member locality of a Participating Authority for resale to a customer.

### **Sourcing Rules**

Any person who performs repair services for a fee and has a place of business in a Participating Authority is considered a Provider and must register and collect the Repair Tax on all taxable repair services performed within the Participating Authority.

Any person who does not have a place of business within a Participating Authority but regularly performs repair services for a fee within a Participating Authority is also a Provider and must register and collect the Repair Tax on all taxable repair services performed within the Participating Authority. A person shall be deemed to be regularly performing repair services for a fee if he enters a Participating Authority to perform repair services for a fee twelve or more times during a calendar year.

Any person who provides repair services for a fee within a Participating Authority but who is not considered a Provider may voluntarily register to collect and remit the Repair Tax on repair services performed for a fee within a Participating Authority for the convenience of his customers.

### **Example 6:**

Repairer has a place of business located within a Participating Authority and provides taxable repair services within the Participating Authority. Repairer is a Provider and

must register and collect the Repair Tax. The Repair Tax must be collected on all charges for motor vehicle repair services performed within the Participating Authority.

Example 7:

Repairer has a place of business located within a Participating Authority and provides taxable repair services both within and outside of the Participating Authority. Repairer is a Provider and must register and collect the Repair Tax. The Repair Tax should only be collected on the charges for motor vehicle repair services performed within the Participating Authority.

Example 8:

Repairer has a place of business located outside of a Participating Authority and provides taxable repair services within the Participating Authority fewer than 12 times during a calendar year. Repairer is not a Provider and is not required to register and collect the Repair Tax.

Example 9:

Repairer has a place of business located outside of a Participating Authority and provides taxable repair services within the Participating Authority 12 or more times during a calendar year. Repairer is a Provider and must register and collect the Repair Tax. The Repair Tax should only be collected on the charges for motor vehicle repair services performed within the Participating Authority.

Example 10:

Customer hires Provider, who has a place of business located within a member locality of a Participating Authority, to repair his motor vehicle inside the Participating Authority. Customer is liable for the Repair Tax on the services performed by Provider. Provider would collect the Repair Tax and remit it to TAX.

Example 11:

Customer hires Provider, who has a place of business located within a member locality of a Participating Authority, to repair his motor vehicle outside the Participating Authority. Customer is not liable for the Repair Tax on the services performed by Provider outside the Participating Authority.

Example 12:

Customer hires Provider, who has a place of business located within a member locality of a Participating Authority, to repair his motor vehicle. Provider contracts out certain repair services, such as electrical repair, to Subcontractor, who is also located within a member locality of a Participating Authority and is also a Provider. Subcontractor is subject to the guidelines and rules regarding Providers. As Provider holds a resale certificate of exemption, Provider is not liable for the sales tax on the services performed by Subcontractor. Customer is liable for the Repair Tax on the services performed by Subcontractor. Customer is also be liable for the Repair Tax on the services performed by Provider. Provider must collect and remit the Repair Tax on both its services and the services of the Subcontractor.

Example 13:

Customer hires Provider, who has a place of business located within a member locality of a Participating Authority, to repair his motor vehicle. Provider contracts out certain repair services, such as electrical repair, to Subcontractor, who is not located within a member locality of a Participating Authority. Subcontractor is not a Provider. Provider is not liable for the Repair Tax on the services performed by Subcontractor, as Subcontractor's services are performed outside of the Authority and thus not subject to the tax. If Provider separately states the charges for the services performed by Subcontractor on Customer's bill, then Customer would not be liable for Repair Tax on the services performed by Subcontractor. Customer would still be liable for the Repair Tax on the services performed by Provider. Provider would collect and remit the Repair Tax on its services.

Example 14:

Customer hires Provider, who is located within a member locality of a Participating Authority, to repair his motor vehicle. Provider contracts out certain repair services, such as electrical repair, to Subcontractor, who is not located within a member locality of a Participating Authority. Subcontractor is not a Provider. Provider is not liable for the tax on the services performed by Subcontractor, as Subcontractor's services are performed outside of the Authority and thus not subject to the tax. Provider does not separately state the charges for the services performed by Subcontractor on Customer's bill. Customer would be liable for the Repair Tax on the services performed by Provider. Customer would also be liable for the Repair Tax on the services performed by Subcontractor. Provider would collect and remit the Repair Tax on both its services and the services of the Subcontractor.

Example 15:

Customer hires Repairer, who is not located within a member locality of a Participating Authority and is not a Provider, to repair his motor vehicle. Repairer contracts out certain repair services, such as electrical repair, to Provider, who is located within a member locality of a Participating Authority. Repairer is not liable for the Repair Tax on the services performed by Provider with a valid resale certificate of exemption. Customer is liable for use tax on the separately stated services performed by Provider (see "Use Tax" below). Repairer must provide Customer with a copy of the invoice or receipt for the services performed by Provider.

**Sales Price**

The basis of the Repair Tax is the sales price, which generally is the amount charged for the repair service. When a Provider offers a coupon or discount for a repair that would reduce the retail price of the repair without providing any value to the Provider, the sales price of the repair is reduced by the amount of the discount. However, if the Provider is reimbursed the amount of the coupon or discount by a third party, the sales price of the repair is not reduced by the amount of the discount.

Example 16:

A Provider offers a \$5.00 discount on an oil change that normally costs \$10.00. The sales price is the amount the Provider receives for the repair, or \$5.00. The Repair Tax is computed on \$5.00. The customer would be liable to the Provider for \$.25 in Repair Tax.

Example 17:

A Provider offers a \$5.00 discount on an oil change that normally costs \$10.00. The Provider is reimbursed the \$5.00 discount by a third party. The sales price is the amount the Provider receives for the repair, or \$10.00. The Repair Tax is computed on \$10.00. The customer would be liable to the Provider for \$.50 in Repair Tax.

For purposes of the Repair Tax, the sales price does not include the following amounts:

- Any fee or assessment levied by the United States, the Commonwealth, or any other state or local government, including those levied by a Participating Authority, on the purchase, sale, or use of motor vehicle repair services, including the fees on inspections levied under *Code of Va. § 46.2-1167* and *Code of Va. § 46.2-1167.1*;

- Any finance charges, carrying charges, service charges or interest from credit extended under conditional sale contracts or conditional contracts providing for deferred payments;
- Any charges for property or other services that are not part of the sale of motor vehicle repair services, such as office supply fees and administrative fees, if the charges are stated separately from the charges for motor vehicle repair services;
- Any bad check and late payment charges; and
- Any charges for billing and collection services.

### **Registration of Providers**

Each Provider must be registered with TAX to file the necessary returns and to remit the Repair Tax. However, if a Provider is already with registered with TAX to collect other taxes and, to the extent that TAX is able to identify such Provider as potentially liable for collecting and remitting the Repair Tax, TAX will notify such Provider in advance of the effective date of the Repair Tax, supply the Provider with the necessary forms and instructions, and automatically register the Provider for the Repair Tax upon receipt of the first completed Form MVR-18, Motor Vehicle Repair Labor and Services Tax Return, filed by the Provider.

TAX will mail the forms and instructions to the Providers it identifies as potentially liable for collecting and remitting the Repair Tax approximately 4 to 8 weeks before the effective date of the Repair Tax in the Provider's Transportation Authority. For Providers already registered with TAX for Retail Sales and Use tax, the mailer will be sent to the mailing address of record for the Retail Sales and Use tax account(s). For Providers not currently registered for Retail Sales and Use Tax, the mailer will be sent to the Provider's primary mailing address of record. The mailer will include detailed instructions regarding the automated registration being offered to Providers already registered with TAX and identified by TAX as being potentially liable to collect and remit the Repair Tax.

If a Provider does not receive forms and instructions from TAX prior to the effective date of the Repair Tax in the Provider's Transportation Authority, the Provider must complete and submit the Form R-1, Business Registration Application Form, to TAX, which is available for download at TAX's website at [www.tax.virginia.gov](http://www.tax.virginia.gov).

### **Filing of Monthly Returns**

Every Provider will be required to file a monthly Form MVR-18, Motor Vehicle Repair Labor & Services Tax Return and remit the Repair Tax due on or before the twentieth

day of the month following the month in which the tax is billed. (Source: *Code of Va.* § 58.1-615)

Providers who receive a mailer from TAX and who elect to use the automatic registration process by submitting the Form MVR-18 included in the mailer, will subsequently be mailed a Form MVR-18 each month by TAX. For Providers who register for the Repair Tax by submitting a completed Form R-1, Business Registration Application, TAX will mail the first Form MVR-18 to the Provider following registration. Each month thereafter, TAX will mail to each registered Provider a Form MVR-18 to use to remit the Repair Tax at least three weeks prior to the return's due date.

The Repair Tax for each period becomes delinquent on the twenty-first day of the succeeding month if not paid. Providers who are registered but do not receive a Form MVR-18 from TAX are still required to complete and submit a Form MVR-18 by the return's due date. The Form MVR-18 and instructions will be available online in the Download Forms section of TAX's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov). (Source: *Code of Va.* § 58.1-616)

Until further notice, TAX will not accept Repair Tax returns and payments filed or paid online or payments by electronic funds transfer. Payment must be submitted with the monthly paper return, Form MVR-18.

After a Provider has registered with TAX either by submitting the Form MVR-18 provided by TAX or by submitting a completed Form R-1, Business Registration Application, the Provider may submit a Form MVR-18 printed using commercial tax preparation software for subsequent months. Commercial tax preparation software companies are required to have the Form MVR-18 approved by TAX before making it available to their clients. Providers using commercial tax preparation software should check with their software companies for information regarding when the software company will begin supporting the Repair Tax.

### **Collection of Tax**

The Repair Tax will be collected by all Providers. The Repair Tax must be reported on each Provider's Form MVR-18, Motor Vehicle Repair Labor & Services Tax Return. The Repair Tax cannot be reported on the Provider's Form ST-9, Retail Sales and Use Tax Return.

Every Provider must separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax will be a debt from the customer to the Provider until paid and recoverable at law in the same manner as other debts. All tax billed or charged by a Provider shall be remitted monthly by each Provider to TAX when the Provider files its Form MVR-18, Motor Vehicle Repair Labor & Services Tax Return. (Source: *Code of Va.* § 58.1-625)



In the event that the applicable repair tax is not collected, the customer is liable for the use tax (see "Use Tax" below).

In the event that a Provider collects the Repair Tax on exempt or non-taxable transactions, the Provider must remit the erroneously or illegally collected tax to TAX unless or until the Provider can affirmatively show that the tax has been refunded to the customer or credited to his account. A Provider who intentionally neglects, fails or refuses to collect the tax on a taxable sale of motor vehicle repair services is liable for and must pay the tax himself. Any Provider who intentionally neglects, fails or refuses to pay or collect the tax, except as allowed under the provisions of the sales tax holidays set forth in *Code of Va. § 58.1-611.2*, subdivision 18 of *Code of Va. § 58.1-609.1*, and *Code of Va. § 58.1-611.3*, is guilty of a Class 1 misdemeanor. Source: *Code of Va. § 58.1-625*)

No Provider shall hold out to the public that he will absorb all or any part of the Repair Tax, or that he will relieve any customer of the payment of all or any part of the tax except during the time periods set out in *Code of Va. § 58.1-611.2*, subdivision 18 of *Code of Va. § 58.1-609.1*, and *Code of Va. § 58.1-611.3* or during the 14 days immediately preceding such time periods for advertisements relating to sales to be made during that time period. Any Provider who does so will be guilty of a Class 2 misdemeanor. (Source: *Code of Va. § 58.1-626*)

### **Use Tax**

Generally, the Repair Tax is collected and remitted by Providers even though the tax is imposed on the customer. However, when a customer purchases repair services in a member locality of a Participating Authority and the applicable tax is not collected, the customer is required to remit the tax directly to TAX using Form MVR-CU, Motor Vehicle Repair Consumer Use Return. Form and instructions are available on-line in the Download Forms section of TAX's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov). Form MVR-CU, Motor Vehicle Repair Consumer Use Return should be used by both business and residential customers. No prior registration with TAX is required for taxpayers filing a Form MVR-CU, Motor Vehicle Repair Consumer Use Return.

### **Bad Debts**

Every dealer will be allowed a credit against the tax shown to be due on the return for the amount of tax previously paid on accounts that are owed to the Provider and that have been found to be worthless within the period covered by the return. The credit, however, cannot exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, Repair Tax, and other nontaxable charges as in the total debt originally owed to the Provider. The amount of accounts for which a credit has been taken that are thereafter in whole

or in part paid to the Provider must be included in the first return filed after collection.  
(Source: *Code of Va.* § 58.1-621)

### **Dealer Discount**

The dealer discount allowed under *Code of Va.* § 58.1-622 is not allowed for the Repair Tax. Motor vehicle repair services charges are not to be included in the amount of taxable sales used to determine the Retail Sales and Use Tax dealer discount.  
(Source: *Code of Va.* § 58.1-605(K)(3); § 58.1-606(H)(3))

### **Example 18:**

Provider collects Retail Sales and Use Tax and is allowed a dealer's discount. Provider also collects the Repair Tax. Provider is not allowed a dealer's discount on Repair Tax remitted to TAX. When Provider determines his Retail Sales and Use Tax dealer discount percentage, he cannot include Repair Tax collections.

### **Penalties and Interest**

Except with respect to fraudulent returns, the failure to file a timely return and make a timely and full payment of this tax will subject the Provider to a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. (Source: *Code of Va.* § 58.1-635(A))

In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of this tax, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of this tax, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. (Source: *Code of Va.* § 58.1-635(A))

The rate of interest on omitted taxes and assessments is the "Underpayment Rate" established pursuant to § 6621 (a) (2) of the Internal Revenue Code plus two percent.  
(Source: *Code of Va.* § 58.1-15(A))

### **Sale of Business**

Any Provider who sells or quits its business, shall make a final return and payment within 15 days after the date of selling or quitting the business. The Provider's successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from TAX showing that all taxes, penalties, and interest have been paid or a

certificate stating that no taxes, penalties, or interest are due. If the purchaser fails to withhold the purchase money as required, the purchaser will be personally liable for the payment of the taxes, penalties and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, may the tax, penalties and interest due by the purchaser be more than the purchase price paid for the business or stock of goods. (Source: *Code of Va.* § 58.1-629)

### **Compliance Provisions**

The Retail Sales and Use Tax compliance provisions set forth in *Code of Va.* §§ 58.1-630 through 58.1-637 and applicable Retail Sales and Use Tax Regulations will apply to the Repair Tax. Whenever the term "dealer" is used in these sections, the term "Provider" shall be substituted:

- *Code of Va.* § 58.1-630 Dealer Bonds;
- *Code of Va.* § 58.1-631 Jeopardy Assessments;
- *Code of Va.* § 58.1-632 Memoranda of Lien;
- *Code of Va.* § 58.1-634 Period of Limitations;
- *Code of Va.* § 58.1-636 Penalty for Failure to File Return or Making False Return; and
- *Code of Va.* § 58.1-637 Bad Checks.

### **Records**

Every Provider required to make a return and pay or collect this tax shall keep and preserve suitable records of the sales and purchases subject to the Repair Tax and such other books of account as may be necessary to determine the amount of tax due, and such other pertinent information as may be required by the Tax Commissioner. This information includes, but is not limited to, the name of the locality in which the repair services were performed. (Source: *Code of Va.* § 58.1-633(A))

### **Special Sales and Use Tax Motor Vehicle Repair Fund**

The revenues from the Repair Tax will be collected and remitted monthly by Providers to TAX and deposited into the Special Sales and Use Tax Motor Vehicle Repair Fund ("Fund"). After transferring moneys from the Fund to TAX to pay for the direct costs of administering the Repair Tax, the moneys in the Fund will be allocated and distributed on a monthly basis to the Participating Authorities, as appropriate.

Any errors made in any distribution, or adjustments that are otherwise necessary, will be made in the distribution for the next month or for subsequent months. Any funds remaining in the Fund at the end of a biennium will not revert to the general fund but will remain in the Fund. Interest earned on the funds will be credited to the Fund.

### **Appeals**

Taxpayers may appeal Repair Tax issues to TAX using the administrative appeals process applicable to other state taxes administered by TAX set forth in *Code of Va. § 58.1-1820 et seq.* and the Administrative Appeal Guidelines for Tax Assessments Issued by the Virginia Department of Taxation (Public Document 06-140, November 29, 2006) available on-line in the Tax Policy Library section of TAX's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov).

### **Additional Information**

These guidelines and rules are available on-line in the Tax Policy Library section of TAX's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov). For additional information, please contact the Office of Customer Services at (804) 367-8037.

**Approved:**



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Janie E. Bowen  
Tax Commissioner  
November 1, 2007